

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 13-2424 RB

AGUSTIN ABASCAL,

Defendant.

**MEMORANDUM OPINION AND ORDER DENYING LEAVE TO PROCEED
ON APPEAL WITHOUT PREPAYMENT OF COSTS OR FEES**

THIS MATTER is before the Court on Mr. Abascal's Application to Proceed Without Prepaying Fees or Costs. (Doc. 57.) For the reasons explained below, the Court concludes that Mr. Abascal's appeal is not taken in good faith and, therefore, will deny his motion.

Pursuant to 28 U.S.C. § 1915(a)(3), "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." For purposes of § 1915(a)(3), a good faith appeal is one that presents a "reasoned, nonfrivolous argument on the law and facts in support of the issues raised on appeal." *Carvalho v. Pugh*, 177 F.3d 1177, 1179 (10th Cir. 1999) (quotations omitted); *see also Coppedge v. United States*, 369 U.S. 438, 442–50 (1962). In determining good faith, the Court should not decide the merits of the issues on appeal but, instead, should only reach the question of whether the appellant has presented a reasoned and nonfrivolous argument. *See Ragan v. Cox*, 305 F.2d 58, 59–60 (10th Cir. 1962).

While Mr. Abascal notes that he fears suffering damage or death from the current pandemic, he has failed to identify the existence of a reasoned, nonfrivolous argument on the law and facts to support his proposed appellate issues. (*See* Docs. 54 at 2; 57.) For this reason, as well

as the reasons set forth in the Court's June 17, 2020 Memorandum Opinion and Order and July 22, 2020 Memorandum Opinion and Order denying Mr. Abascal's motion to reduce sentence and motion to reconsider (*see* Docs. 51; 53), the Court will deny Mr. Abascal's Application and certify that his appeal is not taken in good faith.

The Court advises Mr. Abascal that he may file a motion for leave to proceed on appeal without prepayment of fees in the United States Court of Appeals for the Tenth Circuit within 30 days after service of this Order. *See* Fed. R. App. P. 24(a)(5). "The motion must include a copy of the affidavit filed in the district court and the district court's statement of reasons for its action." *Id.*

IT IS THEREFORE ORDERED that the Application to Proceed Without Prepaying Fees or Costs is **DENIED**; the Court **CERTIFIES** that the appeal is not taken in good faith, and the Court **DIRECTS** the Clerk of the Court to notify the Court of Appeals of this denial and certification.



ROBERT C. BRACK
SENIOR U.S. DISTRICT JUDGE